



DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 220413-0094]

RIN 0648-BL28

Pacific Halibut Fisheries; Catch Sharing Plan

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary final rule.

SUMMARY: NMFS issues regulations to remove limits on the maximum amount of halibut individual fishing quota (IFQ) that may be harvested by a vessel, commonly known as vessel use caps, in IFQ regulatory Areas 4A (Eastern Aleutian Islands), 4B (Central and Western Aleutian Islands), 4C (Central Bering Sea), and 4D (Eastern Bering Sea). This action is needed to provide additional flexibility to IFQ participants in 2022 to ensure allocations of halibut IFQ can be harvested by the limited number of vessels operating in these areas. This action is within the authority of the Secretary of Commerce to establish additional regulations governing the taking of halibut that are in addition to, and not in conflict with, those adopted by the International Pacific Halibut Commission (IPHC). This action is intended to promote the goals and objectives of the IFQ Program, the Northern Pacific Halibut Act of 1982 (Halibut Act), and other applicable laws.

DATES: Effective [*insert date of publication in the **FEDERAL REGISTER***], through December 31, 2022.

ADDRESSES: Electronic copies of the Categorical Exclusion and the Regulatory Impact Review (herein referred to as the “Analysis”) prepared for this action are available from

www.regulations.gov or from the NMFS Alaska Region Web site at

https://www.fisheries.noaa.gov/region/alaska.

FOR FURTHER INFORMATION CONTACT: Abby Jahn, 907-586-7228.

SUPPLEMENTARY INFORMATION:

Background

This final rule implements regulations for the 2022 IFQ fishing year to temporarily remove vessel use caps in Areas 4A, 4B, 4C, and 4D and exclude harvest of IFQ halibut in 2022 from the calculation of vessel use caps in IFQ regulatory Areas 2C, 3A, or 3B. The existing vessel use caps were recommended by the North Pacific Fishery Management Council (Council) and implemented by NMFS as part of the IFQ Program (58 FR 59375; November 9, 1993) as regulations that were in addition to, and not in conflict with, those adopted by the IPHC, consistent with the Halibut Act (16 U.S.C. 773c(c)). The following sections describe the IFQ Program; halibut IFQ vessel use caps; the rationale for and effects from temporarily removing vessel use caps in Areas 4A, 4B, 4C, and 4D; and the regulations implemented under this final rule.

IFQ Program

Commercial halibut and sablefish fisheries in Alaska are subject to regulation under the IFQ Program and the CDQ Program (50 CFR part 679). A key objective of the IFQ Program is to support the social and economic character of the fisheries and the coastal fishing communities where many of these fisheries are based. For more information about the IFQ Program, please refer to Section 2.4 of the Analysis. Because this rule is specific to the halibut IFQ fishery, reference to the IFQ Program in this preamble is specific to halibut unless otherwise noted.

Under the IFQ Program, access to the commercial halibut fisheries is limited to those persons holding quota share (QS). Halibut QS is designated for a specific geographic area of harvest, a specific vessel operation type (catcher vessel (CV) or

catcher/processor), and for a specific range of vessel sizes that may be used to harvest the halibut (vessel category). Out of the four vessel categories of halibut QS, category A shares are designated for catcher/processors that process their catch at sea (*e.g.*, freezer longline vessels) and do not have a vessel length designation, whereas category B, category C, and category D shares are designated to be fished on CVs that meet specific length designations (§ 679.40(a)(5)).

NMFS annually issues IFQ permits to each QS holder. IFQ permits authorize permit holders to harvest a specified amount of a particular IFQ species in an area from a specific operation type and vessel category, consistent with the QS they hold. IFQ is expressed in pounds (lb) and is based on the amount of QS held by the permit holder in relation to the total QS pool for each area with an assigned catch.

The IFQ Program also established: (1) limits on the maximum amount of QS that a person could use (*i.e.*, be used to receive annual IFQ) (§ 679.42(f)); (2) limits on the number of small amounts of indivisible QS units, known as QS blocks, that a person can hold (§ 679.42(g)); (3) limits on the ability of IFQ assigned to one CV vessel category (vessel categories B, C, or D IFQ) to be fished on a different (larger) vessel category with some limited exceptions (§ 679.42(a)(2)); and (4) limits on the maximum amount of halibut IFQ that may be harvested by a vessel during an IFQ fishing year (§ 679.42(h)). Only qualified individuals and initial recipients of QS are eligible to hold CV QS, and they must be on board the vessel when the IFQ is being fished, with a few limited exceptions (§ 679.41(h)(2)). All of these limitations were established to retain the owner-operator nature of the CV halibut IFQ fisheries, limit consolidation of QS, and ensure the annual IFQ is not harvested on a small number of larger vessels.

Halibut IFQ Vessel Use Caps

The Council established vessel use caps under the IFQ Program to limit the maximum amount of halibut that could be harvested on any one vessel. The limits are

intended to help ensure that a minimum number of vessels are engaged in the halibut IFQ fishery and to address concerns about the socio-economic impacts of consolidation under the IFQ Program. For additional detail on vessel use caps, see the preamble to the proposed rule for the IFQ Program (57 FR 57130; December 3, 1992).

This final rule refers to halibut catch limits, commercial halibut allocations, and vessel use caps in net pounds or net metric tons. Net pounds and net metric tons are defined as the weight of halibut from which the gills, entrails, head, ice, and slime have been removed. This terminology used in this final rule is consistent with the IPHC, which establishes catch limits and calculates mortality in net pounds.

For IFQ regulatory Areas 2C, 3A, 3B, 4A, 4B, 4C, 4D, and 4E, vessels cannot be used to harvest more halibut IFQ than one-half percent of the combined total catch limits of halibut (§ 679.42(h)(1)). Applying this regulation to 2022 yields a vessel use cap of 101,490 lb (46.0 mt). This vessel use cap applies to vessels harvesting IFQ halibut in the regulatory areas subject to this final rule: Areas 4A, 4B, 4C, and 4D.

A Community Quota Entity (CQE) is authorized to hold halibut QS in Area 4B on behalf of the community of Adak, Alaska (79 FR 8870; February 14, 2014). A CQE is a NMFS-approved non-profit organization that represents small, remote, coastal communities that meet specific criteria to purchase and hold CV halibut QS on behalf of an eligible community. The CQE holds QS and leases the IFQ derived from the underlying QS to community residents. Any vessel harvesting halibut IFQ that is derived from the QS and held by the CQE representing the community of Adak is subject to the vessel use cap regulations at § 679.42(h)(1)(ii), which limit a vessel to harvest no more than 50,000 lb (22.7 mt), in addition to those set forth at § 679.42(h)(1) introductory text and 679.42(h)(i).

Rationale and Effects of Temporarily Removing Vessel Use Caps in Areas 4A, 4B, 4C, and 4D

On February 10, 2022, at its regularly-scheduled meeting, the Council addressed requests from IFQ fishery stakeholders to remove vessel use caps applicable to the halibut IFQ fisheries in Areas 4A, 4B, 4C, and 4D (Sections 1 and 2.3 of the Analysis). The Council requested this rule because of the ongoing socio-economic impacts of the COVID-19 pandemic as identified by the public, including coastal communities and fishery participants in Area 4. NMFS proposes this rule to provide additional flexibility to vessels operating in Area 4 during the 2022 fishing season. This action is expected to facilitate the harvest of halibut allocated under the IFQ program in Area 4 and provide additional harvest flexibility to vessels operating in Area 4. This action is needed because of the relatively large proportion of vessels participating in Areas 4A, 4B, 4C, and 4D halibut IFQ fisheries that are operating near the current vessel use cap, thereby limiting the amount of additional IFQ that could be harvested on vessels operating in those areas (Section 2.3 of the Analysis). Additionally, this action is expected to provide flexibility to the CQE representing the community of Adak, Alaska, because the minimum number of vessels needed under current use caps exceeds the number of vessels owned by residents of the community (Section 2.5.2 of the Analysis).

The reader is referred to the Analysis, particularly Sections 2.3, 2.6, and 2.7, for additional detail on the efficacy of 2020 and 2021 rulemakings that temporarily removed vessel use caps in Area 4, a broader discussion of the range of factors considered for this final rule, and the anticipated effects of removing the vessel use caps in Areas 4A, 4B, 4C, and 4D for both CQE and non-CQE-associated vessels.

The Council recommended “expedited action” to remove vessel use caps for the halibut IFQ fishery in Areas 4A, 4B, 4C, and 4D to be made effective as soon as possible during the 2022 fishing year, which ends on December 7, 2022. NMFS accordingly established an expedited 15-day comment period for the proposed rule.

The Council did not recommend, and this final rule does not include, measures to remove the vessel use caps for the sablefish IFQ fishery, or for other halibut IFQ areas, due to the larger number of vessels that are currently active in the sablefish IFQ fishery and these other halibut areas. Area 4E was not included because it is entirely allocated to harvest under the CDQ Program; therefore, vessel use caps do not apply to Area 4E. Additionally, halibut harvests in Areas 2C, 3A, and 3B are unlikely to be constrained under the current vessel use caps (Section 2.5.2.1 of the Analysis).

NMFS also considered the potential impacts on halibut conservation and management if vessel use caps vessels in Areas 4A, 4B, 4C, and 4D are relieved for the 2022 IFQ fishing year. The regulatory amendments in this rule temporarily add a regulation to remove vessel use caps in Areas 4A, 4B, 4C, and 4D. This final rule provides additional flexibility to facilitate harvest of the halibut resource and is responsive to the Council request to implement expedited rulemaking for the 2022 IFQ fishing year due to the ongoing economic, social, and public health impacts of the COVID-19 pandemic. This final rule does not modify the vessel use cap provisions in future years, consistent with the Council's goals in implementing vessel use caps in this fishery (Section 2.3 in the Analysis). This final rule does not modify other elements of the IFQ Program. This final rule does not increase or otherwise modify the 2022 halibut catch limits adopted by the IPHC and implemented by NMFS (87 FR 12604, March 7, 2022). This final rule does not modify any other conservation measures recommended by the IPHC and adopted by NMFS, nor any other conservation measures implemented by NMFS independent of the IPHC. This final rule does not modify other limitations on the use of QS and IFQ described in the previous sections of this preamble.

Final Regulations

After considering the best available information, the Convention, the status of the halibut resource, and the potential social and economic costs of maintaining the vessel

use cap limits described in the preamble, this final rule adds a new, temporary provision at 50 CFR § 679.42(h)(1)(iii) to remove vessel use caps for vessels harvesting IFQ halibut in Areas 4A, 4B, 4C, and 4D during the 2022 IFQ fishing year. Because vessel use caps are applied under existing regulations at the fishery level, including harvest in all areas, this final rule clarifies that harvest of IFQ halibut in regulatory Areas 4A, 4B, 4C, and 4D is excluded from the calculation of vessel use caps in IFQ regulatory Areas 2C, 3A, or 3B during the 2022 IFQ fishing year.

Changes from Proposed to Final Rule

NMFS did not make changes to the regulatory text in this final rule from the regulatory text in the proposed rule.

Comments and Responses

NMFS received three comment letters during the public comment period for the proposed rule (87 FR 23155, April 19, 2022). Below, NMFS summarizes and responds to three unique comments. Of the three comment letters received, one letter was from a non-profit corporation, one letter was from an individual, and one letter was from a fishery participant.

Comment 1: One commenter generally supported the action because it is beneficial to fishermen and it is aligned with the original purpose of the IFQ program, which promotes management objectives of the Halibut Act. Additionally, the commenter opined that this action would have a positive impact on fishery participant's ability to fully harvest their allocations.

Response: NMFS acknowledges the commenter's support for this action.

Comment 2: One commenter supported the action because it provides flexibility and benefits communities in Area 4, which continue to face economic, operational, and public health challenges due to the fishery-level impacts of the COVID-19 pandemic.

Response: NMFS acknowledges the commenter's support for this action.

Comment 3: One commenter opposed the action because of concerns with consolidation, who benefits from actions like this one, and barriers to entry into the IFQ Program. The commenter adds that, in their view, this action does not align with the original intent of the IFQ program to protect fishery participants from consolidation. They opine that NMFS should not allow a small number of QS holders to continue to benefit from the IFQ program. The commenter believes that if QS holders do not want to fish, then they should sell their quota shares. In their view, by removing vessel use caps, this action promotes consolidation, which increases the price of the QS and barriers to entry into the IFQ Program.

Response: The Council recommended implementing this action for the 2022 fishing year because of the ongoing socio-economic impacts of the COVID-19 pandemic identified by the public, including coastal communities and fishery participants in Area 4. NMFS carefully assessed the potential social and economic effects of this action. This final rule is temporary and therefore does not modify the vessel use cap provisions in future years. The Council and NMFS continue to strongly support the vessel use caps provision of the IFQ Program. These vessel use cap requirements are an essential component of the IFQ Program because they ensure harvesting opportunity is not consolidated into too few vessels (Section 2.3 of the Analysis).

When the Council developed the IFQ Program, one primary objective was to protect entry-level and part-time participants that may have otherwise been eliminated because of predicted consolidation trends. However, since implementation, the value of QS has increased and the number of vessels harvesting IFQ has decreased, resulting in some consolidation. Notably, however, this action is limited to modifying vessel use caps in 2022 only, as detailed in the preamble to this final rule, and does not modify any other provisions of the IFQ Program that are designed to prevent excessive consolidation and

to facilitate entry. Those unmodified provisions include the QS use caps (§ 679.42 (f)) and the fish down provision (Amendment 42 to the BSAI GOA FMP).

Classification

Regulations governing the U.S. fisheries for Pacific halibut are developed by the IPHC, the Council, and the Secretary of Commerce. Section 5 of the Northern Pacific Halibut Act of 1982 (Halibut Act, 16 U.S.C. 773c) allows the Regional Council authority over a particular geographical area to develop regulations governing the allocation and catch of halibut in U.S. Convention waters as long as those regulations do not conflict with IPHC regulations. This final action is consistent with the Council's authority to allocate halibut catch among fishery participants in Convention waters in and off Alaska.

There is good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delay in effective date. It is important that this final rule is implemented in a timely manner before fishing vessels reach their use caps. The IFQ halibut fishing season is already underway and began on March 6, 2022. A consequence of delayed effectiveness of this final rule would be that a vessel's fishing activity may be limited unnecessarily if a vessel reaches their use cap prior to the effective date of this rule. Additionally, an expedited implementation provides much needed flexibility. Any delay in the effective date of this final rule would be contrary to public interest. Therefore, there is good cause to advance this thoroughly considered action without delay.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

A Regulatory Impact Review was prepared to assess costs and benefits of available regulatory alternatives. A copy of this analysis is available from NMFS (see **ADDRESSES**). Specific aspects of the economic analysis are discussed below in the Final Regulatory Flexibility Analysis (FRFA) section.

Small Entity Compliance Guide

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a final regulatory flexibility analysis, the agency shall publish one or more guides to assist small entities in complying with the rule and shall designate such publications as “small entity compliance guides.” Copies of the proposed rule, this final rule, and the small entity compliance guide are available on the Alaska Region's website at: <https://www.fisheries.noaa.gov/alaska/sustainable-fisheries/pacific-halibut-and-sablefish-individual-fishing-quota-ifq-program>.

Final Regulatory Flexibility Analysis

This FRFA incorporates the Initial Regulatory Flexibility Analysis (IRFA) and the analyses completed to support this action. Section 604 of the Regulatory Flexibility Act (RFA) requires that when an agency promulgates a final rule under section 553 of Title 5 of the U.S. Code, after being required by that section or any other law to publish a general notice of proposed rulemaking, the agency shall prepare a FRFA. Section 604 describes the required contents of a FRFA: (1) A statement of the need for and objectives of the rule; (2) a statement of the significant issues raised by the public comments in response to the IRFA, a statement of the assessment of the agency of such issues, and a statement of any changes made to the proposed rule as a result of such comments; (3) the response of the agency to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration (SBA) in response to the proposed rule, and a detailed statement of any change made to the proposed rule in the final rule as a result of the comments; (4) a description of and an estimate of the number of small entities to which the rule will apply or an explanation of why no such estimate is available; (5) a description of the projected reporting, recordkeeping, and other compliance requirements of the rule, including an estimate of the classes of small entities that will be subject to the requirement and the type of professional skills necessary for preparation of the report or

record; and (6) a description of the steps the agency has taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in this final rule and why each one of the other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected.

A description of this final rule and the need for and objectives of this rule are contained in the preamble to this final rule and the preamble to the proposed rule (87 FR 23155, April 19, 2022). That description is not repeated here.

Public and Chief Counsel for Advocacy Comments on the IRFA

NMFS published the proposed rule on April 19, 2022 (87 FR 23155). An IRFA was prepared and included in the Classification section of the preamble to the proposed rule. The comment period for the proposed rule closed on May 4, 2022. The Chief Counsel for Advocacy of the SBA did not file any comments on the proposed rule. NMFS received no comments specifically on the IRFA; therefore, no changes were made to this rule as a result of comments on the IRFA. However, one comment was received on the entities affected by this rule. For a summary of this comment and the agency's response, refer to the section above titled "Comments and Responses". .

Number and Description of Small Entities Regulated by This Final Rule

This final rule directly regulates the owners and operators of vessels that are used to harvest halibut IFQ in IFQ Areas 4A, 4B, 4C, or 4D. As of 2020 (the most recent year of gross revenue data), there were 99 unique vessels that harvested halibut IFQ in IFQ Areas 4A, 4B, 4C, or 4D. Based on average annual gross revenue data, including affiliations, all but one of these vessels that landed halibut in 2020 are considered small entities based on the applicable \$11 million threshold. Additional details are included in Sections 2.9 in the Analysis prepared for this rule (see **ADDRESSES**).

Recordkeeping, Reporting, and Other Compliance Requirements

This action does not contain additional recordkeeping, reporting, or other compliance requirements.

Description of Significant Alternatives That Minimize Adverse Impacts on Small Entities

The RFA requires identification of any significant alternatives to the final rule that accomplish the stated objectives of the final action, consistent with applicable statutes, and that would minimize any significant economic impact of the final rule on small entities. The Council requested one action alternative. No other alternatives were considered. Additionally, NMFS did not identify other action alternatives that would provide the same level of flexibility that was requested by the Council within the requested expedited timeframe. Further, this action is the same as the action implemented in 2021 and similar to the action implemented in 2020. In consideration of the Council's request, NMFS analyzed the impacts of the action alternative compared to the status quo.

The status quo alternative would retain the existing vessel use cap restrictions as defined under 50 CFR 679.42(h). It is possible that existing vessel use caps regulations under the status quo may increase the likelihood that some of the annual halibut allocation is left unharvested in Area 4.

This final rule implements the action alternative to remove limits on the maximum amount of halibut IFQ that may be harvested by a vessel in IFQ regulatory Areas 4A, 4B, 4C, and 4D. This action provides additional flexibility to IFQ participants in 2022 to ensure allocations of halibut IFQ can be harvested by the limited number of vessels operating in these Areas. However, this may result in a reduction in crew jobs and opportunities for new entrants in Areas 4A, 4B, 4C, and 4D. Additionally, if there are fewer participants in the fishery, it is possible that landings could consolidate to fewer processors and communities depending on landing location and historic harvester-processor relationships.

Collection-of-Information Requirements

This rule contains no information collection requirements under the Paperwork Reduction Act of 1995.

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Reporting and Recordkeeping Requirements.

Dated: June 1, 2022.

Samuel D. Rauch, III

Deputy Assistant Administrator for Regulatory Programs,
National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 679 is amended as follows:

**PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF
ALASKA**

1. The authority citation for part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.*; 1801 *et seq.*; 3631 *et seq.*; Pub. L. 108-447;
Pub. L. 111-281.

2. In § 679.42, add paragraph (h)(1)(iii) to read as follows:

§ 679.42 Limitations on use of QS and IFQ.

* * * * *

(h) * * *

(1) * * *

(iii) Notwithstanding the vessel use caps specified in paragraphs (h)(1) introductory text and (h)(1)(ii) of this section, vessel use caps do not apply to vessels harvesting IFQ halibut in IFQ regulatory Areas 4A, 4B, 4C, and 4D during the 2022 IFQ fishing year. Harvest of IFQ halibut in regulatory Areas 4A, 4B, 4C, and 4D is excluded

from the calculation of vessel use caps for IFQ regulatory Areas 2C, 3A, or 3B during the 2022 IFQ fishing year.

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